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SUPREME COURT, U.S.

Nos. 06-487, 06-503

IN THE

Supreme Court of the United States

CROWN EQUIPMENT CORPORATION
Petitioner,

v.

JEREMIAH "BART" MORRIS
Respondent.

On Petition for Writ Of Certiorari
To The West Virginia Supreme Court of Appeals

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION

The underlying action is one in which a Virginia resident, Jeremiah Morris, is seeking damages arising out of a workplace accident in Virginia – an accident regarding which most if not all witnesses and evidence will be located in Virginia. Presumably seeking to avoid Virginia's strict adherence to contributory negligence principles, Mr. Morris brought his claim in West Virginia, which has no substantive nexus to the allegations.

Seeking to preserve its scarce resources for actions with an actual relationship with the State, and to address the perception that it is or will become a magnet for litigation in which it has no interest, the West Virginia Legislature enacted a forum non conveniens statute to preclude venue in cases such as Morris's, which should be heard in another state. See W. Va. Code 56-1-1(c).

However, in a results-oriented, activist opinion, the West Virginia Supreme Court of Appeals struck down these efforts by the Legislature. Misapplying the Privileges and Immunities Act of the U.S. Constitution, the court turned the statute on its head; inconsistent with the plain intent of the Legislature, the statute now not only encourages lawsuits with no nexus with the state, it provides an incentive for non-residents to seek out West Virginia residents to sue in order to exploit a perceived favorable jurisdiction. At the same time, it protects non-West Virginia companies, requiring that additional burdens be met before such a suit may be filed.

Moreover, this decision of the West Virginia high court flies in the face of decades of jurisprudence and legislative policy, from this Court and from other high courts and legislatures throughout the country. Respondent's argument in opposition, while valiant in light of the overwhelming precedent and policy against it, does not change this reality. Accordingly, Petitioner relies on the points made

in its Petition to address those substantive arguments from Respondent.

However, Respondent does raise two new arguments. First, Respondent claims that this Court does not have jurisdiction to hear this matter. Additionally, he argues that the West Virginia high court's ruling was based on state grounds independent of the constitutional basis. As explained further below, neither argument has merit. Respectfully, Petitioner again urges this Court to accept its Petition to affirm the role of the court and to re-establish a thoughtful and constitutional venue statute rightfully created by West Virginia's legislature.

I. THIS COURT HAS JURISDICTION UNDER 28 U.S.C. § 1257(a).

Pursuant to Title 28 of the U.S. Code, this Court has jurisdiction to hear appeals from "[f]inal judgments or decrees rendered by the highest court of a State . . . where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States." 28 U.S.C. § 1257(a).

As this Court has held repeatedly, for purposes of § 1257, an opinion regarding venue rendered by a state's highest court is considered a "final judgment[ ]." See Burlington Northern Railroad Co. v. Ford, 504 U.S. 648, 650 n.* (1992) (citing Starnes, infra); American Motorists Ins. Co. v. Starnes, 425 U.S. 637, 642 n.3 (1976) (relying on Langdeau, infra); Mercantile National Bank at Dallas v. Langdeau, 371 U.S. 555, 558 (1963).

Langdeau, the seminal case governing this jurisdictional issue, involved allegations against two national banks (and others) who were sued in Travis County, Texas based on a venue provision of the state's insurance code. At odds with that state venue provision, however, was a federal

banking statute which established venue as the county where the banks were located - Dallas County. 371 U.S. at 556-57. Prior to trial of the underlying conspiracy and fraud case, the banks sought certiorari regarding which statute governed, thus determining the proper venue for the case. The receiver for the insurance company challenged this Court's jurisdiction on grounds that the ruling of the Texas Supreme Court (that a federal statute could not prohibit suit in a venue expressly allowed by the state venue statute) was not a final judgment. See id. at 557.

Accepting jurisdiction and holding that for purposes of § 1257, the Texas high court's ruling was a final judgment, this Court stated thus:

> [W]e believe that it serves the policy underlying the requirement of finality in 28 U.S.C. s 1257 to determine now in which state court appellants may be tried rather than to subject them, and appellee, to long and complex litigation which may all be for naught if consideration of the preliminary question of venue is postponed until the conclusion of the proceedings.

Id. at 558. Likewise, if this Court waited until after the underlying products liability design defect claim was tried in West Virginia, and thereafter ruled in favor of Petitioner's position that venue is not appropriate in West Virginia, the parties would have been subjected "to long complex litigation . . . all for naught. . . ." Id. Indeed, these factual circumstances present an even stronger argument for early consideration than those in Langdeau, because the resources of two different states are at issue (West Virginia and Virginia, which Petitioner believes is the proper venue).

Moreover, based on Langdeau, this Court has accepted jurisdiction in a directly analogous set of circumstances, where it granted certiorari so that it could determine the constitutionality of a state venue statute. Starnes, 425 U.S. at

642 n.3 (stating that "[f]or the reasons stated in Mercantile Nat. Bank v. Langdeau . . . the judgment presently before the Court is final for purposes of s 1257(2), and holding that the state venue statute did not violate the Equal Protection Clause). Even after the 1988 Amendments to § 1257, the Court has continued to deem rulings governing venue statutes to be final judgments for purposes of the rule. See Ford, 504 U.S. at 650 n.* (stating that "[t]he decision below is final for purposes of 28 U.S.C. § 1257(a)," and upholding the constitutionality of the subject state's venue rules).

Because this Court has determined that rulings affecting venue are final judgments for purposes of 28 U.S.C. § 1257(a), Respondent's arguments regarding the exceptions to § 1257 are of no consequence. It is undisputed that this Court's holding on the constitutionality of West Virginia Code § 56-1-1-(c), the state venue statute, will determine the venue of this case (West Virginia or Virginia). Thus, jurisdiction is appropriate under § 1257(a).

II. THE WEST VIRGINIA HIGH COURT'S HOLDING WAS NOT BASED ON STATE LAW.

The West Virginia high court never wavered in its reasoning that its constitutional analysis formed the sole basis of its opinion. After a lengthy discussion of the Privileges and Immunities Clause, the court expressly held that

> under the Privileges and Immunities Clause of the *United States Constitution*, Art. IV, Sec. 2, the provisions of *W.Va. Code*, 56-1-1(c) [2003] do not apply to civil actions filed against West Virginia citizens and residents.
>
> Applying the foregoing principles to the facts of the instant case, we conclude that the circuit court impermissibly applied *W.Va. Code*, 56-1-1(c) [2003] to treat Mr. Morris'

> nonresidency as a categorical bar to his bringing a suit in West Virginia against Jefferds. Moreover, Jefferds is a West Virginia corporation, and the provisions of *W.Va. Code*, 56-1-1(c) [2003] do not apply to Morris' suit against Jefferds.
>
> Therefore, the circuit court's dismissal of Morris' suit against Jefferds must be reversed.

Crown's App. 20A; Jefferds App. 20-21 (emphasis added). Likewise, the Syllabus by the court identifies the Privileges and Immunities Clause as the basis for the specific ruling being challenged by Petitioner. See Crown's App. 3A; Jefferds App. 3. Based on this plain language, there can be no dispute that the basis of the court's holding was its analysis under the Privileges and Immunities Clause.

Respondent's reference to the West Virginia high court's sole mention of W. Va. Code § 56-1-1(a), notably in a footnote, is merely dicta stated as further support of the court's view that an interpretation of § 56-1-1(c) which categorically barred suits against resident defendants "would contravene the constitutionally permissible scope of the venue statutes in an interstate context." Crown App. 20A; Jefferds App. 19 (emphasis added). Moreover, § 56-1-1(a) governs suits brought by resident plaintiffs and could only be interpreted as inconsistent with § 56-1-1(c) if § 56-1-1(c) were construed as to not apply to resident defendant corporations – the crux of the constitutional debate. See Crown App. 61A-63A (stating § 56-1-1 in its entirety). Such a circular argument would not form an independent basis for a high court ruling, nor would one explained entirely in a footnote. See Crown App.19A n.7; Jefferds App. 19 n.7.

CONCLUSION

For the reasons set forth herein and in its Petition, Crown Equipment Corporation's Petition for Writ of Certiorari must be granted.

Respectfully submitted,

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